IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of case

W.P. No. 547 (S/B) of 2002

Date of decision :- 19-10-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 19-10-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No.547 (S/B) of 2002

1. Ved Ram S/o Sri Rameshwar
   R/o Chinti Majra, Post Sittarganj
   Tehsil Sittarganj, District U.S. Nagar
2. Harish Chandra Suyal
   S/o Sri Krishna Nand Suyal
   R/o Bhood Maholia
   Post Khatima
   Tehsil Khatima
   District U.S. Nagar .....Petitioners

Versus

1. State of Uttaranchal through Secretary
   Revenue Dept. Uttaranchal Shasan, Dehradun
2. Commissioner Kumaon Division Nainital
3. District Magistrate/Collector, U.S.Nagar
4. Additional District Magistrate (Finance & Revenue)
   U.S. Nagar
5. Sub Divisional Magistrate
   District U.S. Nagar .....Respondents

Dated :-19th October, 2006

Mr. Manoj Tiwari learned counsel for the petitioners.
Mr. N.P. Shah learned Standing Counsel for the State.

Hon'ble J. C. S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution of India, the petitioner has sought the following reliefs:-

(i) issue a writ, order or direction in the nature of mandamus commanding the respondent no.3 to consider and regularize the services of the petitioner no.1 on the post of Collection Peon and of petitioner no.2 on the post of Collection Amin in Accordance with the relevant service Rules.

(ii) To issue a writ order or direction in the nature of mandamus commanding the respondent no.1 to create sufficient

number of permanent posts of Collection Amin and Collection Peon for District U.S. Nagar in view of the above volume of revenue collection work.

(iii) Issue a writ order or direction in the nature of mandamus commanding the respondent no.1 to hold an independent inquiry into the matter for punishing the responsible officer who dispensed with the services of senior persons in order to accommodate juniors.

(iv) Issue any other suitable writ order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(v) To award the costs of the petition in favour of the petitioners.

2. The petitioners' case is that the petitioner no.1 was initially appointed as Seasonal Collection Peon in the year 1982 and the petitioner no.2 was appointed in the year 1993 as Seasonal Collection Amin. In the year 1997, a writ petition No.32873/1997 (Umesh Babu & 78 others Vs. State of U.P.) was filed before the Allahabad High Court by 79 persons who were engaged as Seasonal Collection Staff in the District U.S. Nagar. The Allahabad High Court directed the authority concerned to consider and dispose of their representations. To accommodate the aforesaid 79 persons, the respondents dispensed with the services of the petitioners by completely ignoring their position in the seniority list. In similar circumstances one writ petition No.4561/2001 was filed before this Court by Sri Mukul Chandra Joshi who was earlier serving as Seasonal A.W.B.N. in District

U.S. Nagar. This Court vide order dated 6.10.2001 directed the respondents to allow Sri Mukul Chandra Joshi to continue to work, if any person junior to him is working. The petitioner has challenged by way of this writ petition that the action of the respondents was illegal and arbitrary. It has been further pleaded that the respondents had permitted juniors to the petitioner to continue to work as Seasonal Collection Peon/Amin without giving them any brake whatsoever while the petitioners were not allowed to work. It was further pleaded that the court directed the respondents to consider the representation of 79 persons. In pursuance of the order, the respondents continued them to work and as such it was in absolute violation of the U.P. Collection Amins Service Rules, 1974 framed under Article 309 of the Constitution of India. The said Rule provides that the seasonal Collection Amin who have worked satisfactory for four 'fasli' may be considered for regularization according to seniority.

3. The respondents had filed a counter affidavit in which they have specifically stated that the petitioners were not allowed to work, as there was no post available. It was further pleaded in the counter affidavit that the petitioner-Ved Ram worked as Seasonal Collection Peon time to time and when the requisite sanction of the Commissioner of the Division was received for such seasonal appointment and after every season appointments automatically came to an end as per conditions of his appointment. However, after September 1998 neither any post was vacant nor he worked as Seasonal Collection Peon thereafter. It was further pleaded in the counter affidavit that Harish Chandra Suyal-petitioner no.2 was engaged as Seasonal

Collection Amin time to time as per sanction granted by the Commissioner Kumaon Division, Nainital for a particular season and his engagement automatically came to an end after completion of the session as per conditions of his appointment. It was further pleaded that on account of non-availability of the post and sanction the petitioner no.2 could not be appointed as Seasonal Collection Amin because as per direction of the Allahabad High court, 44 Seasonal Collection Amins and 32 Seasonal Collection Peons were to be adjusted within the District who are already in excess in requisite sanctioned strength.

4. I have heard the learned counsel for the parties and perused the record.

5. It is not disputed that the petitioners had not worked till the year 1998. It is not disputed that the Rules referred above are applicable in the case of the appointment of the Seasonal Collection Amins/Peons. Rule 5 of U.P. Collection Amins Service Rules, 1974 provides as under :-

> "5. **भर्ती का श्रोत** – [(1) सेवा की सामान्य श्रेणी के पदों पर भर्ती इस नियमावली के भाग 5 में व्यवस्थित रीति से प्रतियोगिता परीक्षा के परिणाम पर की जायेगी :
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> प्रतिबन्ध यह है कि उपयुक्त अभ्यथियों की उपलब्धता के अधीन रहते हुए पन्द्रह प्रतिषत रिक्तियॉ ऐसे मौलिक रूप से नियुक्त कलेक्षन चपरासियों में से पदोन्नति द्वारा भरी जायेंगी–
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> (क) जिन्होने माध्यमिक शिक्षा परिपद, उत्तर प्रदेष की कम से कम हाईस्कूल परीक्षा या सरकार द्वारा उसके समकक्ष मान्यता प्राप्त कोई परीक्षा उत्तीर्ण की हो; और
>
> (ख) जिन्होने राजस्व विभाग के कलेक्षन संगठन में कम से कम छ फसलों की अवधि के लिये कार्य किया हो:

प्रतिबन्ध यह और कि पैंतीस प्रतिषत रिक्तियों ऐसे सीजनल कलेक्षन अमीनों में से चयन द्वारा भरी जायेंगी।

(क) जिन्होंने कम से कम चार फसलों तक सनतोषजनक रूप से कार्य किया हो;

(ख) जिनकी आयु उस वर्ष की पहली जुलाई को, जिस वर्ष चयन किया जाय, 45 वर्ष से अधिक न हो:

प्रतिबन्ध यह भी है कि यदि उपयुक्त अभ्यर्थि उपलब्ध न हो, तो शेष रिक्तियां सीधी भर्ती के माघ्यम से समान्य अभ्यर्थियों द्वारा भरी जायेंगी।"

Rule 17 (k) thereof also provides as under:-

"17-क सीजनल कलेक्षन अमीनों के चयन की प्रकिया –

कलेक्टर सीजनल कलेक्षन अमीनों की जो नियम 5 के उपनियम (1) के प्रथम परन्तुक के अधीन चयन के लिये पात्र हों एक सूची तैयार करेगा और उनमें से सनताषजनक कार्य के अधीन जिले में सीजनल कलेक्षन अमीन के पद पर उनकी सेवा अवधि के आधार पर उपेक्षित संख्या में चयन करेगा।]"

6. Perusal of record reveals that 15 per cent of the post of Collection Amin would be filled up by the substantive regularly appointed peon and 35% of the total vacancies would be filled up from the Seasonal Collection Amins who have completed 4 faslis satisfactory as seasonal Collection Amin and they may be appointed within the required quota. It is not the case of the petitioners that they had not been considered within 35% of the vacancies. The petitioners had not been reappointed in the year 1998 and they are claiming to be regularized on the basis that they have worked for more than 4 faslis as Seasonal Collection Amin and their cases would have been considered by the respondents. It has not been pleaded in the petition that how many vacancies were available at the time when the petitioners were not allowed to work. It is not

further pleaded that the petitioners were senior most and they were under the zone of consideration and the authorities should have considered their cases. It is not pleaded in the petition that the petitioners were not considered at the time of regularization as provided under Rule 5. The petitioners are claiming to be regularized on the basis that they had worked 4 faslis in their account. The respondents had denied that the vacancies were not available at that time. It was further stated that 79 persons were appointed by the respondents in pursuance of the writ petition filed by them before the Allahabad High Court. It is, however, true that the court had not directed to employ them in the service. The court has only directed to consider their representations of those 79 persons. Meaning thereby, if 79 petitioners have completed 4 fasli they were allowed to continue. There would be no vacancy to accommodate the petitioners. It is also the case of the respondents that there was no vacancy in the year 1998 and the respondents had to bear 79 persons for whom no vacancies were available. The petitioners are claiming the regularization under Rule 5 and if there were no vacancies the petitioners cannot be reguarlised under the Rules. The services of the petitioners were on ad-hoc basis and they have no enforceable right to seek regularization form the respondents. It has been held by the Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991**:-

> *"44. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the*

Constitution Bench of this Court in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

7. It was further pointed out that a number of persons out of 79 persons who were appointed in the year 1998 were juniors to the petitioners and they are continuously serving and some of them had been regularized. If some appointments have been made without following the procedure and if the services of some persons have been regularised in the past, it cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. if illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. It has been held by the Hon'ble Supreme Court in the **State of U.P. v. Neeraj Awasthi,(2006) 1 SCC 667** that :-

"75. The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution will have no application. Article 14 has a positive

concept. No equality can be claimed in illegality is now well settled."

8. The petitioners has filed this petition in the year 2002 and the petitioners were not allowed to work in the year 1998. The petitioners had explained the latches. Delay or latches is one of the factors which is to be borne in mind by the court while exercising the discretionary powers under Article 226 of the constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is a negligence of omission on the part of the applicant to assert his right has taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even merely making the representation to the authority concerned cannot justify a belated approach to the Court and the court would refuse to exercise the discretionary powers under Article 226 of the Constitution. There is a delay in filing the petition in this matter. It cannot be ignored.

9. In view of the foregoing discussion, I am of the view that the petition is devoid of merit and is liable to be dismissed.

10. The petition is dismissed accordingly. No order as to costs.

(J.C.S. Rawat, J.)

Dated 19.10.2006
LSR